

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
016703-0008(97-2RCE)

First named inventor: Isy Goldwasser et al.

Application No.: 08/847,967

Art Unit: 1639

Filed: April 22, 1997

Examiner: Epperson, J.

Title: The Combinatorial Synthesis of Inorganic or Composite Materials

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

- ☒ Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of Amendment and Reponse, and 2 Rule 132 Declarations (identify type of reply):

- ☒ has been filed previously on April 10, 2007.
- ☐ is enclosed herewith.

- B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

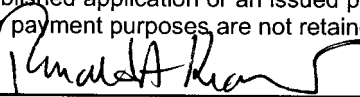
☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.


Signature

October 9, 2007
Date

Ronald A. Krasnow
Typed or printed name

33,321
Registration Number, if applicable

Symyx Technologies, Inc.
Address

408-773-4024
Telephone Number

415, Oakmead Parkway, Sunnyvale, CA 94085
Address

Enclosures: ☒ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

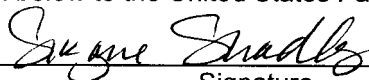
CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☒ Being filed electronically on the date shown below to the United States Patent and Trademark Office.

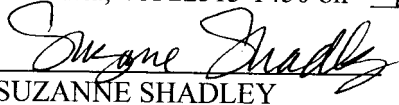
October 9, 2007
Date


Signature

Suzanne Shadley
Typed or printed name of person signing certificate

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being electronically filed with the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 10-9-07.

BY: 
SUZANNE SHADLEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Goldwasser et al.

Serial No.: 08/847,967

Filed: 4/22/97

For: The Combinatorial Synthesis Of
Inorganic Or Composite Materials

Confirmation No.: 2173

Group Art Unit: 1639

Examiner: Epperson

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT ESTABLISHING UNINTENTIONAL DELAY

Sir:

This Statement is submitted with the Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR § 1.137(b).

Applicants filed a response to the pending Office action on April 10, 2007. Apparently, the Examiner issued an Advisory Action that was mailed on April 18, 2007. However, that Advisory Action was not received, and was returned to the Patent and Trademark Office on April 30, 2007 (as shown in the attached document). During an internal docket review, it was noticed that the status of this application was uncertain, and an inquiry to private PAIR provided Applicants with the attached document. Applicants contacted Examiner Epperson who informed Applicants that the last paper in the file was the Advisory Action of April 18, 2007, and that no notice of abandonment had been mailed. The Examiner was to have initiated the mailing of a notice of abandonment, but that document has not yet been received.

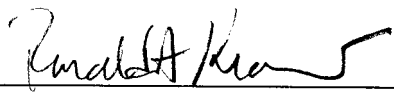
As is clear from the above facts, Applicants had no notice that the Advisory Action had been issued and that a response was due.

In view of the foregoing, Applicants believe that the petition to revive the application should be granted and that the RCE and Amendment K, as well as the other documents (e.g., two Rule 132 Declarations) filed by Applicants on April 10, 2007 should be entered and considered by the Examiner.

Applicants believe that no further fees are required in connection with the instant amendment. If necessary, however, the Examiner is hereby authorized to charge any fees required in connection with this application to Deposit Account No. 50-0496.

Respectfully submitted,

Dated: Oct. 9, 2007



Ronald A. Krasnow
Registration No. 33,321
Attorney for Applicants

Symyx Technologies, Inc.
415 Oakmead Parkway
Sunnyvale, CA 94085
Ph: (408) 773-4024; Fax: (408) 773-4029

If Undeliverable Return in Ten Days

**OFFICIAL BUSINESS . . .
PENALTY FOR PRIVATE USE, \$300**

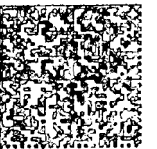
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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

08/847,967

Applicant(s)

GOLDWASSER ET AL.

Examiner

Jon D. Epperson

Art Unit

1639

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Please see attached. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 94 and 97.
Claim(s) rejected: 8, 10, 11, 15-24, 26, 30-35, 42, 43, 45-49, 51-56, 58-60, 64-72, 74-91, 93, 95, 96, 98 and 99.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Art Unit: 1639

The After-Final amendment is denied entry for the following reasons:

1. Applicants have removed the "stoichiometry" limitation in independent claims 42, 68, etc. in attempt to get around the priori art of record (e.g., Pohm et al.) significantly changes the scope of the claims, which introduces new search and/or consideration. For example, in the event that Pohm et al. is overcome a new search will be needed to see if Pohm et al. can be combined with additional art in a 35 U.S.C. § 103(a) rejection to reject the other limitations in the Markush listing (e.g., composition, concentration, thickness, etc.). Furthermore, the Pohm et al. rejection may need to be re-written under 35 U.S.C. § 102 if it still reads on said Markush listing (i.e., new "consideration" may be required).
2. There is no reason given for why the amendment was not earlier presented. See 37 CFR 1.116(b).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon D Epperson whose telephone number is (571) 272-0808. The examiner can normally be reached Monday-Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James (Doug) Schultz can be reached on (571) 272-0763. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 08/847,967

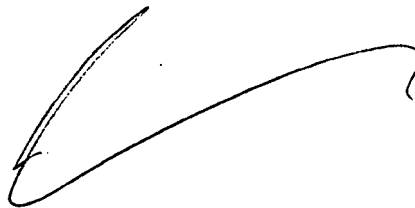
Page 3

Art Unit: 1639

Jon D. Epperson, Ph.D.

April 14, 2007

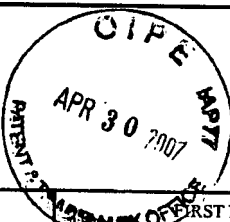
JON EPPERSON
PRIMARY EXAMINER

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line that curves upwards at the end.



UNITED STATES PATENT AND TRADEMARK OFFICE

ZFW



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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08/847,967

04/22/1997

Isy Goldwasser

016703-00080

2173

7590 04/18/2007
MADELINE JOHNSTON, ESQ.
KING & SPALDING LLP
191 PEACHTREE STREET
ATLANTA, GA 30303-1763

EXAMINER

EPPELSON, JON D

ART UNIT

PAPER NUMBER

1639

MAIL DATE

DELIVERY MODE

04/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590 04/18/2007
MADELINE JOHNSTON, ESQ.
KING & SPALDING LLP
191 PEACHTREE STREET
ATLANTA, GA 30303-1763

EXAMINER

EPPERSON, JON D

ART UNIT	PAPER NUMBER
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1639

MAIL DATE	DELIVERY MODE
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04/18/2007

PAPER

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Applicant(s)

GOLDWASSER ET AL.

Examiner

Jon D. Epperson

Art Unit

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Application/Control Number: 08/847,967

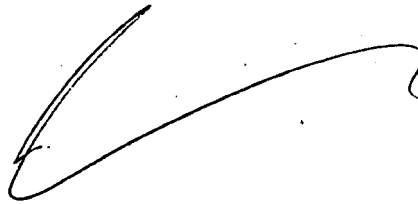
Page 3

Art Unit: 1639

Jon D. Epperson, Ph.D.

April 14, 2007

JON EPPERSON
PRIMARY EXAMINER

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